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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

To: The Commission

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COMMENTS OF MEDIA AMERICA CORPORATION

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May 16, 1995

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SUMMARY

Media America Corporation ("MAC") strongly supports changes in the television broadcast ownership rules that will enable local broadcasters to survive and compete against nationwide group owners, and thereby continue to provide the kind of local community service that is the heritage of local broadcasting in America.

Specifically, MAC proposes that television duopolies be permitted where (a) no more than one of the co-owned stations is a VHF station, and (b) at least four full-power television voices (counting a duopoly as one voice) remain in the market. In addition, television local marketing agreements (LMAs) should be permitted within the parameters outlined above for television duopolies and under the same attribution rules that currently exist for radio LMAs.

An LMA should have no adverse effect on renewal expectancy. A brokered station should be judged on the same basis as any other station facing a comparative renewal challenge -- on the strength of its service to the public and not on the identity of its program supplier.

Finally, if the Commission decides not to adopt rules permitting television LMAs generally, it should grandfather television LMAs that were entered into before this rulemaking proceeding was commenced.

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COMMENTS OF MEDIA AMERICA CORPORATION

Media America Corporation ("MAC"), by its undersigned counsel, submits the following comments on the Commission's proposed changes in rules and policies governing television broadcast ownership and attribution.[1/]

A. Introduction

MAC is a family-owned broadcast company whose holdings are all in the Phoenix, Arizona, market, where the owners of MAC live. In television, MAC owns and operates Phoenix station KTVK-TV (Channel 3) and has a local marketing agreement ("LMA") with Brooks Broadcasting, L.L.C., permittee of KASW(TV) (Channel 61), Phoenix, which plans to begin service later this year. In

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[1/] Further Notice of Proposed Rule Making, FCC 94-322, released January 17, 1995 (hereinafter "Further Notice").

radio, MAC owns and operates KESZ-FM, Phoenix, and has a joint sales agreement with the licensee of KTWC-FM, Phoenix.

MAC has invested exclusively in Phoenix because, like the Commission, MAC's owners have always shared a strong belief in the importance of local broadcasting. In MAC's view, locally owned broadcast stations better understand and more effectively address the needs of their communities, because the owners themselves are _of_ the community. Accordingly, these comments focus on community service by television broadcasters, and the importance of that service to America's future.

As set forth below, MAC strongly supports changes in the broadcast ownership rules that will (a) enable local broadcasters to continue providing locally-oriented service and (b) provide incentives for local citizens to invest in the television stations licensed to serve their communities.

B. A Heritage of Community Service

The strongest and most honored heritage of broadcasting in America is service -- service to the hometown community of the local broadcaster. Local broadcasters have promised to serve their communities, and both the broadcasters and their communities have taken that promise very seriously. For decades, when times have been hard and serious issues have confronted our nation or its communities, citizens have turned to their local radio and television broadcasters for information, perspective, and debate of viewpoints.

Some stations are family owned, while others are operated by group owners. In every case, however, the licensee and the community depend upon each other. The station relies on the community for its economic survival; the community depends on the broadcaster for information and community dialogue. The thousands of varied voices and images provided by America's free hometown broadcasters have become the most important means by which the communities of our nation learn about themselves, their country, and the world. It is a service every bit as powerful and important as the local hospital, school, or bank. And it is uniquely American.

However, the current state of the broadcast business is testing this heritage. A myriad of other media now compete with the broadcaster for economic support in each community. Consequently, local broadcasters who have served their communities well for decades are being swallowed by corporate groups whose allegiance is more to their investors than to the communities where they operate.

Many explain this as simply the natural evolution of "the business." In that view, the locally owned broadcast station is merely following the vanishing corner drug store or hometown bank. All such enterprises are said to be victims of a free market economy, which does not disturb those who believe that the Commission's only proper function is to keep broadcasters from interfering with one another's signals.

While there is still time, somebody needs to stand up and shout, "Broadcasting <u>is</u> different! Broadcasting is more than a business. Broadcasting is a community service. And since America is a nation of communities, broadcasting is vital to the future of America's freedom!"

Broadcasters have traditionally been, and should continue to be, licensed to serve their *communities* of license. Until now, due mostly to the Commission's requirement of *community* service, broadcasters have paid for their licenses with service to thousands of hometowns across the land. Even before the Commission imposed formal ascertainment requirements or developed the concept of "issue-oriented programming," service by broadcasters was based on familiarity and involvement with the problems and needs of the community. When the owner-operators of the station drove the streets, attended the schools and churches, paid the taxes, and lived the problems of their *community* of license, the station's public service programming addressed those issues of importance to <u>their</u> community, the *community* of license.

C. <u>**Local Ownership Rules Should Promote Local Service**</u>

Television duopoly has the potential both to promote and to destroy localism. For radio broadcasters, duopoly has been a salvation. In a shrinking universe, duopoly has enabled dying radio stations to survive and prosper and provide new services to their communities. The same principle applies to television.

MAC exemplifies how television duopoly would serve stations and viewers in both large and small communities. MAC started in 1955 with a single station, KTVK-TV in Phoenix. Its first decade was a struggle just to meet payroll. Proceeds from a family farm kept the station on the air. But the strength of television as a community business improved and, as the years passed, a bond developed between the growing population of Phoenix and the growing business of KTVK.

As Phoenix expanded, however, more broadcast stations filled the airwaves. With the arrival of each new competing medium, KTVK's economic base shrank. In order to survive and maintain the ability to serve the community, MAC had to somehow grow its business. This confronted MAC with a financial and philosophical choice. It could use KTVK's operating capital to expand by acquiring stations in other markets. Or, like every other local television broadcaster in Phoenix, it could simply give up and sell out to a big absentee group owner. MAC rejected both options. It decided to do <u>more</u> of what it had always done best -- be hometown broadcasters. So instead of diverting resources and attention to distant markets, MAC asked the Commission to waive the ownership rules to allow it to operate a radio station, as well as its television station, in

Phoenix. When the Commission granted the waiver, MAC purchased KESZ-FM. The result has been enormously beneficial for both the viewers of KTVK and the listeners of KESZ-FM.

But the landscape continues to change. Now the media conglomerates wish to own still more stations. The same economic pressures that exist on a national basis also impact hometown broadcasters. Accordingly, if there is sound reason to liberalize the national ownership rules for the benefit of media conglomerates, there is even more reason to liberalize the local ownership rules for locally owned stations. Adoption of the proposed change to allow coverage of 50 percent of the nation's population (up from 25 percent) would enable a single group owner suddenly to own stations in <u>all</u> of the top 30 markets, or dozens in the top 100. If that happens without complementary adjustments to the local ownership rules, then the concept of broadcasting as a service to local communities is dead! A company that has access to half the country will not need to provide local community service anywhere. Indeed, some group owners have indicated that they are buying stations not to operate as community broadcasters, but to guarantee test markets for their programming subsidiaries.

Thus, to protect the locally owned stations' continued service to their local communities, the FCC must also adopt rules that allow television duopolies and local time brokerage agreements. Only by enabling local broadcasters to compete with the media conglomerates can the Commission guarantee that at least some *community* service will be provided. Once the new mega-chains are established, their primary responsibility will be to their investors and lenders. A mega-group owning stations that cover half the country will not need affiliates. The local needs and problems of any individual community cannot be its highest priority or interest. By definition, absentee group owners will not attend the schools, pay the taxes, or live the problems of any *community* of license. While valuable and important, their programming cannot address the problems and needs of individual local communities with the commitment and depth of local owners whose children attend the schools, who pay the taxes, who drive the streets, and who <u>live</u> the problems of their own hometown every day.

This is a critical juncture for the American system of free over-the-air broadcasting. *Community* service must remain a measure of licensee excellence. With extensive competing video fare available from satellites, cable, and other providers, local community service is what makes broadcast television special. At risk is not just business, but a real and important part of the daily life of hundreds of America's hometowns. If local television broadcasters are not permitted to compete with the mega-chains that liberalized national ownership rules will spawn, our nation's most important line of communications will ultimately be controlled by a very few powerful entities. Communities need access to local information and forums for local public issues -- programming that requires a special commitment to more than the mega-corporation's bottom line. In the interest of preserving localism, the Commission must adapt its rules to ensure a future for locally owned television stations and the special commitment to community that locally owned stations represent.

D. **Specific Proposals**

To address this concern, MAC urges that the following specific changes be adopted in the television rules.

1. **Duopolies**

Common ownership of two full-power television stations with overlapping city-grade contours should be permitted in the following circumstances: (a) at least one of the stations is a UHF station; and (b) at least four full-power television voices (counting a duopoly as one voice) remain in the market. By allowing duopolies in such circumstances, the Commission would give the independent local broadcaster a chance to compete with large multiple owners in its market. Given the combined market power of two stations, local independent owners lacking the economic resources of media conglomerates would have a better chance to compete against stations operated in the market by the large group owners.

To prevent undue VHF domination, common ownership of two VHF stations in the same market should not be permitted. Only

VHF/UHF and UHF/UHF duopolies should be allowed. Further, no new duopoly should be authorized if the resulting number of full power television voices in the market would be fewer than four. This condition, analogous to the "30 voices" concept in Note 7(1) of §73.3555 that supports multiple ownership waivers in the top 25 markets, would preserve diversity of viewpoint in the market and prevent excessive concentration of television ownership in smaller markets.

The Commission has already recognized in the radio context that competition and diversity are often hampered by restrictive ownership rules that increase the cost of doing business and make it difficult for some stations to compete in today's marketplace. Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2774 (¶37) (1992). The same is true of television, especially for locally owned stations that must compete with media giants. Thus, as it did in radio, the Commission should relax the duopoly rule, which artificially denies stations efficiencies that could be realized through consolidation of facilities, managerial and clerical staffs, sales, bookkeeping, promotion, production, news, and other aspects of station operation. Without the opportunity to realize such efficiencies and cost savings, locally-owned independent stations cannot hope to compete with expanding national or regional chains.

In MAC's case, the economies of scale flowing from ownership of a second television station in the Phoenix market with

KTVK would enable MAC to better serve the community through its serious public affairs commitment. With the savings in engineering, space, and other overhead, MAC will be able to invest significantly greater resources in public service projects and public affairs programming on both KTVK and the second station. MAC will also be able to co-use production facilities and personnel, making possible the creation of more local programming, including sports programs, children's and educational programs, and information shows.

2. **Local Marketing Agreements**

Local marketing agreements for television stations should be permitted within the parameters outlined above for television duopolies and under the same attribution rules that currently exist for radio LMAs. Thus, any television licensee brokering more than 15 percent of the broadcast time per week of another television station with an overlapping city-grade contour would be deemed to have an attributable interest in the brokered station. As a practical matter, this would mean that a licensee not eligible to own both stations as a duopoly would not be eligible to own one and broker more than 15 percent of the time on the other. Hence, if the Commission adopts the duopoly rules that MAC proposes above, television LMAs between stations in the same market would be allowed only if at least one of the stations is a UHF station and at least four full-power television voices (counting a duopoly as one voice) remain in the market.[2/]

As noted above, MAC, which operates KTVK (Channel 3) in Phoenix, has entered into an LMA with the permittee of KASW (Channel 61) in Phoenix, which anticipates commencing broadcast operation later this year. MAC entered into this arrangement in late 1994 largely out of a need to preserve its competitive strength in the market after KTVK suddenly, after 40 years, lost its affiliation with ABC due to forces beyond its control and was left unaffiliated with any of the four major networks. Notwithstanding KTVK's longevity in the market and popularity with the public, MAC quickly concluded that it could not in the long term continue to compete effectively with the local network affiliate stations in the market unless it teamed with another local television facility to provide complementary programming and a broader audience base for advertisers. Such an arrangement will afford significant economies of scale of the kind described above, which in turn will enable MAC to continue its substantial public service programming for the benefit of the community. It will also allow MAC to compete with the major network affiliate stations in the market, which in the end will improve the service of all.

2/ Significantly, however, the 15 percent programming benchmark for attribution would still permit two stations not eligible for a full LMA to share common local newscasts and public affairs programs, because such programming would normally not exceed 15 percent of the week.

a. **Renewal Expectancy**

The Commission has asked for comment on what effect, if any, LMAs should have on the renewal expectancy of a television station.[3/] In our strong view, an LMA should have no adverse effect on renewal expectancy. To deny renewal expectancy to brokered stations simply because the programming is brokered would kill all LMAs. No licensee would dare risk an LMA if the mere existence of the LMA, ipso facto, would effectively give the station to a renewal challenger. At the very least, such an ill-considered policy would invite a wave of license renewal challenges and would flood the Commission with comparative renewal litigation.

This would plainly disserve the public interest. As the Commission itself has recognized, LMAs serve the public interest by allowing stations to function cooperatively and pool resources. Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2787 (1992) (LMAs are "generally beneficial to the industry and listening audience"); Further Notice, ¶135. Since LMAs serve the public interest, a renewal policy that operates to discourage and defeat LMAs would make no sense at all. Moreover, it would be highly unfair at renewal time to penalize a licensee for entering into an agreement that at the time of execution was completely consistent with Commission policy and was sanctioned by the Commission itself.

[3/] Further Notice, ¶139.

A brokered station should be judged at renewal time on the same basis as any other station. Thus, if, through an LMA, a licensee has delivered superior public service, has responded to ascertained community needs, and has earned a high reputation in the community, that licensee should receive a renewal expectancy, notwithstanding that the service was provided through an LMA. What should count is the record of service itself, not the business arrangement by which the licensee provides that service -- especially since the Commission's policy is to give licensees "flexibility in fulfilling their public interest obligations in light of marketplace realities." Fox Television Stations, Inc., 9 FCC Rcd 62, 63, n. 6 (1993). Indeed, because the Commission holds the licensee liable for noncompliance at a brokered station,[4/] it would be anomalous, if not legally indefensible, to deny the licensee the benefit of a renewal expectancy when the station provides superior service under an LMA.

b. Grandfathering of Pre-Existing LMAs

If the Commission decides not to adopt rules that would permit television LMAs generally, the Commission should "grandfather" (for at least the initial term of the LMA) any LMA that was entered into before the current rulemaking proceeding was commenced. It would be manifestly unfair to abruptly outlaw in

[4/] See, Clear Channel Television, Inc., FCC 95-108, released April 5, 1995 (licensee assessed forfeiture and given short-term renewal for violations of commercial limits in children's programming furnished by time broker under LMA).

mid-term agreements that were perfectly lawful and consistent with Commission rules and policy when they were entered into and on which licensees have relied in making long-range business plans and committing substantial economic resources.

E. Conclusion

The Commission must do everything possible to keep free, local television broadcasting a vital part of America's communications future. In our multi-channel world, the public interest requires that local broadcasters be given the tools to survive so that they can serve the local needs of their communities. The rules and policies proposed above will promote that objective.

Respectfully submitted,

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